

PDVSA

**EQUIPMENT PURCHASE AGREEMENT**

between

Energy Parts Solutions, LLC

and

Derwick Associates, S.A.

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December 30, 2009

## EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement (the "Agreement") is made effective as of the 30th day of December 2009 (the "Effective Date"), between ENERGY PARTS SOLUTIONS, LLC, a Missouri company ("Seller"), and DERWICK ASSOCIATES, S.A., a Panamanian company ("Buyer").

### RECITALS

Buyer desires to purchase the eleven (11) gas turbine generator packages consisting of 1 refurbished GE LM2500PE, 4 used GE TM2500, 2 refurbished PW Twin Pac FT-4C-1D, and 4 new RR Trent 60, along with auxiliary equipment and parts all of which is further described in Exhibit A (the "Equipment").

Seller desires to sell the Equipment to Buyer.

FOR AND IN CONSIDERATION of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties agree as follows:

#### **1. PURCHASE AND SALE OF EQUIPMENT**

Upon the terms and subject to the conditions contained herein, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Equipment.

#### **2. PURCHASE PRICE; PAYMENT TERMS**

##### **2.1 Purchase Price**

The purchase price for the Equipment is U.S.\$207,741,306.20 (the "Purchase Price").

##### **2.2 Payment Terms**

On or before ten (10) days following the Effective Date the Buyer shall wire to Seller in immediately available funds U.S.\$20,743,878.87. On or before ten (10) days following Seller's written notice to Buyer of readiness to ship the Equipment, the Buyer shall wire to Seller in immediately available funds the amounts stated in the schedule below for the respective Equipment for which notice has been given:

<u>Estimated Payment Date</u>	<u>Payment Amount</u>	<u>Equipment</u>
1/25/2010	U.S.\$50,000,000	4 GE TM2500 GTGs GTG
2/15/2010	U.S.\$10,000,000	1 GE LM2500PE
3/1/2010	U.S.\$35,000,000	2 PW Twin Pac FT-4C-1D GTGs
3/29/2010	U.S.\$80,000,000	4 RR Trent 60 GTGs
4/26/2010	U.S.\$11,995,427.33	Transformers/Parts

All funds wired to Seller shall be sent according to the following instructions:

US Bank  
3615 W Broadway Blvd  
Sedalia, MO 65301  
Routing Number: 081000210  
Account Number: 152307883347  
SWIFT Code is: USBKUS44IMT (that is an 'I' and not a '1')

For payments not timely received by Seller, the Seller may then (i) charge a late fee of the lesser of 1 ½ % per month or the highest rate allow by applicable law will be assessed and owed by Buyer plus any fees and costs incurred by Seller during the period of non or late payment with respect to the ownership, maintenance and storage of the Equipment, (ii) retain any monies already paid as liquidated damages, and/or (iii) suspend or terminate this Agreement in whole or in part, in which case Buyer shall be responsible for any added costs related to said suspension termination.

### **3. ASSUMPTION OF LIABILITIES; REMOVAL AND TRANSPORTING OF EQUIPMENT; TITLE AND RISK OF LOSS**

#### **3.1 Assumption of Liabilities**

Upon payment of the Purchase Price the Buyer shall assume and agree to pay, perform and discharge when due all liabilities arising out of, in connection with, or related to the ownership, storage, removal, operation, use, or maintenance of the Equipment relating to periods on or after said date.

#### **3.2 Removal and Transporting of Equipment**

After Seller's receipt of the Purchase Price, the Seller agrees to assist Buyer and its representatives in gaining access to the Equipment where it is stored or located so that Buyer can remove and transport the Equipment. Buyer will at all times while at the storage facility abide by the applicable safety rules and regulations. Buyer will work closely with Seller's and its representative's and agent's personnel to ensure that Buyer's activities shall not interfere with any other activities on-going at the facilities. Buyer shall be responsible for all storage charges for the Equipment after the date of Seller's receipt of the Purchase Price. In the event Buyer retains Seller to transport the Equipment from its present location, then Seller will agree to do so at cost plus 15% and the Parties will execute a separate Purchase Order for said the additional work which will include a mutually agreeable advance of funds so that Seller can mobilize and commence the work.

#### **3.3 Title and Risk of Loss**

Title and risk of loss in and to any of the Equipment shall transfer from Seller to Buyer upon Seller's notice of readiness to ship said Equipment from its present location; provided, however, if Buyer does not engage Seller to handle the storage, and transporting of said Equipment under a separate agreement or purchase order then risk of loss in and to said Equipment shall transfer to Buyer upon Seller's receipt of the Purchase Price associated with said Equipment.

### **4. WARRANTY**

#### **4.1 Seller hereby represents and warrants to Buyer that:**

- (a) Seller shall have full legal and beneficial title to the Equipment, free and clear of any and all security interests, liens, claims, charges or encumbrances of any nature whatsoever, together with full power and lawful authority to deliver the Equipment to Buyer; and Seller shall transfer good

and marketable title to the Equipment to Buyer prior to the Equipment being transported from its present location.

- (b) Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is formed and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Seller is duly qualified to transact business and is in good standing in each jurisdiction in which its ownership of the Equipment and commitments made hereunder makes such qualification necessary.
- (c) Seller has the requisite power and authority to execute this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Seller. This Agreement has been duly executed and delivered by Seller and, assuming due execution and delivery by Buyer, constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.
- (d) The execution and delivery by Seller of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate any provision of the constituent documents of Seller, (ii) violate any order of any governmental authority to which Seller is bound or subject, (iii) violate any applicable law, or (iv) result in the imposition or creation of any lien upon the Equipment.
- (e) No order or permit issued by, or declaration or filing with, or notification to, or waiver from any governmental authority is required on the part of Seller in connection with the execution and delivery of this Agreement, or the compliance or performance by Seller with any provision contained in this Agreement.
- (f) There is no legal action or order pending or overtly threatened against Seller that seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby.
- (g) Seller is, with respect to the Equipment and this Agreement, in compliance with all applicable laws.
- (h) No rights of first offer or other preferential rights to purchase any of the Equipment are held by third parties.
- (i) There are no defects in material and workmanship in the Equipment for a period of twelve (12) months from the installation of the Equipment at Buyer's site or eighteen (18) months from the date of Seller's receipt of the Purchase Price, whichever occurs first. In the event of a warranted defect in the Equipment occurs during the warranty term and Buyer so notifies Seller within said period, Seller shall correct such defect by either repair or making available a repaired or replacement Equipment, or part thereof, at Seller's place of repair/replacement. Buyer shall be responsible for removing, transporting and installing any defective or repaired/replaced Equipment or part thereof. The terms set forth in this Section 4.1(i) sets forth the exclusive remedies for all claims based on failure of or defect in the Equipment provided under this Agreement whether the failure arises before, during or after the warranty period and whether said claim is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The duties of Seller under this Section 4.1(i) do not extend to any repairs, adjustments, alterations, replacements or maintenance that may be required as a result of normal wear and tear in the operation of the Equipment, normal degradation in the performance of the Equipment, or as a result of (i) improper repair or alteration by Buyer or any other person (other than Seller or its affiliates), (ii) misuse, negligence or damage by Buyer or any other person (other than Seller or its affiliates), (iii) misuse, negligence or damage by Buyer or other persons, (iv) excessive operation at peak capacity, frequent starting, type of fuel,

detrimental air inlet conditions, or erosion, corrosion or material deposit of fluids. The warranty and remedies are further conditioned upon (a) the proper storage, installation, operation and maintenance of the equipment and conformance with the operation and instruction manuals provided by the suppliers and manufacturers, (b) repair or modification pursuant to the instructions of the suppliers and manufacturers and as otherwise directed by Seller, and (c) either (y) installation, startup and commissioning of the Equipment will be performed by Seller or one of its affiliates under separate agreement or (z) on-site supervisory services for the installation, startup and commissioning of the Equipment will be performed by Seller or one of its affiliates under separate agreement. **SELLER HEREBY DISCLAIMS ANY OTHER WARRANTY EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO THE EQUIPMENT.**

4.2 Buyer hereby represents and warrants to Seller that:

- (a) Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is formed and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Buyer is duly qualified to transact business and is in good standing in each jurisdiction in which its commitments hereunder makes such qualification necessary.
- (b) Buyer has the requisite power and authority to execute this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and, assuming due execution and delivery by Seller, constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.
- (c) The execution and delivery by Buyer of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate any provision of the constituent documents of Buyer, (ii) violate any order of any governmental authority to which Buyer is bound or subject, or (iii) violate any applicable law.
- (d) No order or permit issued by, or declaration or filing with, or notification to, or waiver from any governmental authority is required on the part of Buyer in connection with the execution and delivery of this Agreement, or the compliance or performance by Buyer with any provision contained in this Agreement.
- (e) There is no legal action or order pending or overtly threatened against Buyer that seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby.
- (f) The execution and delivery by Buyer of this Agreement and the consummation of the transactions contemplated hereby or any subsequent transaction involving the resale of the Equipment do not violate the U.S. Foreign Corrupt Practices Act, and in connection therewith, Buyer agrees not to directly or indirectly receive, authorize, make, or promise to make any offer, payment, or gift of anything of value that would violate the laws of the United States of America or the laws of Venezuela to or for the use or benefit of (a) any official, candidate for political office, or employee of any agency or instrumentality of any government, political party, public international organization, or any other person, or (b) any person, while knowing that all or a portion of such money or thing of value will be directly or indirectly offered, given, or promised to any official, candidate for political office, or employee of any agency or instrumentality of any government, political party, public international organization, or any other person.

## **5. INDEMNIFICATION**

Buyer assumes liability for, and hereby agrees to indemnify, protect, save and keep harmless Seller and its directors, officers, and employees from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements, including, without limitation, reasonable attorney's fees and expenses, of any kind or nature, which may be imposed on, incurred by or asserted against Seller arising out of and in connection with (i) Buyer's obligations under this Agreement, (ii) acceptance, ownership, delivery, possession, use, operations, maintenance, repair, function, registration, sales, return, storage, or other disposition of the Equipment or any accident in connection therewith after the transfer of the title of the Equipment to Buyer on the date of Seller's receipt of the Purchase Price (except for defects in the equipment, latent or otherwise), or (iii) the negligence of Buyer, its employees, representative, contractors and agents.

## **6. TAXES**

Buyer shall be responsible for and shall pay when due any and all taxes, duties, fees or other charges (including ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, use or value added taxes) imposed by any governmental authority which relate to the transactions under this Agreement. Upon request, either party agrees to furnish to the other evidence of any applicable tax or duty exemption acceptable to the taxing or customs authorities. In the event Buyer is obligated by law to deduct or otherwise withhold from the amounts due to Seller under this Agreement any taxes, duties or other charges for which it is responsible, then it agrees to pay such additional amounts to Seller to equal the full amount for which Seller is entitled and shall provide Seller with accurate official receipts from the appropriate governmental authority for the deducted or withheld amounts.

## **7. DEFAULT; REMEDIES**

### **7.1 Events of Default**

If any one of more of the following events of default (herein "Event of Default") shall happen, then this Agreement may at the option of the party not in default be terminated:

- (a) If either party shall default in the due and punctual payment of any sum due to the other which default shall not be cured within five (5) business days after written notice of default to the defaulting party; provided, however, no notice and cure period shall apply with respect to any payments of the Purchase Price under Section 2.2;
- (b) If either party shall default in the performance of any of the material provisions contained in the Agreement, which default shall continue for five (5) business days after written notice of default to the defaulting party; or
- (c) If any representation or warranty made by either party herein or made in any statement or certificate furnished or required hereunder, or in connection with the execution and delivery of this Agreement, proves untrue in any material respect as of the date of issuance or making hereof.

### **7.2 Remedies**

Upon the occurrence of an Event of Default the non-defaulting party shall have all rights and remedies at law and at equity.

## **8. MISCELLANEOUS**

### **8.1 Notices**

Any and all notices given, or required to be given hereunder shall be in writing and shall be deemed to have been adequately given when received by the party to whom such notice is being given. Notices shall be addressed if to Seller to: ENERGY PARTS SOLUTIONS, LLC, Attn: Jeff Canon, 2031 Adams Road, Sedalia, MO 65301; and if to Buyer to: DERWICK ASSOCIATES, S.A., Attn: Alejandro Betancourt Lopez, MMG Tower, Piso 16, Calle 53, Urbanizacion Marbella, Ciudad de Panama, Republica de Panama, Presente, or such other address as the respective parties hereto shall from time to time designate in writing to the other party.

### **8.2 Captions**

Caption and section headings set forth are for convenience of reference only and shall not in any manner be deemed to limit or restrict the context of the section to which they relate.

### **8.3 Applicable Law**

This Agreement is entered into and shall be governed by and interpreted in accordance with the laws of the State of Missouri notwithstanding its conflict of law provisions.

### **8.4 Entire Agreement**

This Agreement supersedes all prior understandings, representations, negotiations, and correspondence between the parties and constitutes the entire Agreement between the parties with respect to the transaction contemplated and shall not in any manner be supplemented, amended or modified by any course of dealing, course of performance or usage of trade or by any other means except by a written instrument executed on behalf of the parties by their duly authorized officers.

### **8.5 Confidentiality**

Seller and Buyer agree to treat this Agreement and the terms hereof as confidential and not to, without the prior written consent of the other party hereto, disclose the terms hereof to any other person except (i) to its counsel and accountants or other agents or professional advisors in connection with or relating to the transactions contemplated by this Agreement, (ii) to any court, governmental agency or instrumentality or other supervising body requesting such disclosure, (iii) to any person as may be required by any government regulation or order (including any regulation, request or order of a bank regulatory agency or authority), law, statute, regulations, decrees, subpoenas or court orders, (iv) its directors, officers, employees, affiliates, successors and assigns, (v) to any banks or other financial institutions in any debt financing by or for the benefit of Buyer or (vi) in connection with any enforcement of the terms of this Agreement. Seller and Buyer shall cause its officers, directors, agents, and employees to comply with the foregoing paragraph.

### **8.6 Further Assurances**

Seller and Buyer agree that each of them will, and will cause their respective representatives and affiliates, to execute and deliver such further instruments of conveyance and transfer and take such other action as may reasonably be requested by any party hereto to carry out the purposes and intents hereof.

### **8.7 Accidental Loss**

If, subsequent to the date of this Agreement and prior to the date of Seller's receipt of the Purchase Price, any portion of the Equipment becomes destroyed by fire or other casualty, is taken in condemnation or under the right of eminent domain, or proceedings for such purposes are pending or threatened, or becomes unavailable for any other reason through no fault of its own (collectively, "Accidental Loss"), Seller shall have the option to either (a) sell the Equipment notwithstanding any such Accidental Loss, and the Purchase Price shall be equitably adjusted per the mutual agreement of the parties or (b) terminate this Agreement without further obligation of either party except that the Buyer shall be entitled to the return of the full amount of any amount of the Purchase Price paid to Seller. In the event of subpart (a) above Seller shall (i) on the date of Seller's receipt of the Purchase Price, pay to Buyer all sums paid to Seller by third parties by reason of the Accidental Loss of such Equipment, (ii) assign, transfer and set over unto Buyer all of the right, title and interest of Seller in and to any unpaid awards or other payments from third parties arising therefrom, and (iii) not voluntarily compromise, settle or adjust any material amounts payable by reason of any Accidental Loss of any portion of the Equipment without first obtaining the written consent of Buyer.

### **8.8 Expenses**

Except as otherwise set forth in this Agreement, Seller and Buyer shall each bear its own expenses (including, without limitation, attorney's fees) incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

### **8.9 Submission to Jurisdiction**

The parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the federal or state courts sitting in Missouri, and any appellate court from any thereof, for the resolution of claim or dispute relating to or arising under this Agreement.

### **8.10 Excusable Delay**

Neither Seller nor Buyer shall be responsible to the other for any delay ("Excusable Delay") in the performance of its duties under this Agreement (other than payment obligations) due solely to any cause beyond its reasonable control and not occasioned by its intentional act, fault or negligence including, but not limited to acts of God, strikes, lockout or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States or any state or local government or any of their departments, agencies or officials, or any civil or military authority, insurrections, riots, earthquake, fire storm, restraint of government and people, civil disturbances, or explosions. Either Seller or Buyer shall promptly notify the other when it anticipates that an Excusable Delay has occurred or is likely to be incurred and in each case specify to the extent practicable the estimated extent of such delay. Except for an Excusable Delay, time shall be of the essence in the parties fulfilling their obligations under this Agreement.

### **8.11 Severability**

If any provision of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect.

### **8.12 Limitation of Liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR OTHERWISE, NO PARTY HERETO (OR ITS SUBSIDIARIES, AFFILIATES OR ASSIGNS) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO ANY OTHER PARTY (OR ITS SUBSIDIARIES, AFFILIATES OR ASSIGNS) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL,



INCIDENTAL OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR INCOME, COST OF CAPITAL, OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

**8.13 Binding Effect; Assignment** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by Seller or Buyer (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void.

**8.14 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.


**8.15 Validity**

In the event the Purchase Price specified in Section 2.2 above is not received by Seller by 4 pm Central Standard Time on the date stipulated in Section 2.2 above, then this Agreement shall be deemed null and void without notice or any other action by either party in which case neither party shall have any further obligation or liability with respect to this Agreement or the subject matter thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the day and year first above written by their duly authorized officers or representatives.

Seller:

ENERGY PARTS SOLUTIONS, LLC

By: 

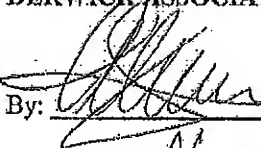
Print Name: Jeff Canon

Title: CEO

Date: 1-25-2010

Buyer:

DERWICK ASSOCIATES, S.A.

By: 

Print Name: Alejandro Belarmino

Title: President

Date: 1-25-2010

**Exhibit A**

**Equipment Description**

One (1) refurbished GE LM2500PE gas turbine generator package and auxiliary equipment and parts as described in EPS Proposal No. 709-2905 dated November 17, 2009

Four (4) used GE TM2500 gas turbine generator packages and auxiliary equipment and parts as described in EPS Proposal No. 709-2907 dated November 17, 2009

Two (2) refurbished PW Twin Pac FT-4C-1D turbine generator packages and auxiliary equipment and parts as described in EPS Proposal No. 709-2906 dated November 4, 2009

Four (4) new RR Trent 60 turbine generator packages and auxiliary equipment and parts as described in EPS Proposal No. 709-2904 dated November 4, 2009